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EXAMINER

LONSBERRY, HUNTER B

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2623

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/818,230
Filing Date: March 27, 2001
Appellant(s): NOBLE, TABER B.

MAILED

FEB 08 2007

Technology Center 2600

Georgann S. Grunebach
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/26/06 appealing from the Office
action mailed 3/7/06.

Art Unit: 2623

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

U.S. Patent 6,268,849 to Boyer

U.S. Patent 6,005,565 to Legall

Art Unit: 2623

U.S. Patent 6,177,931 to Alexander

U.S. Patent 6,219,839 to Sampsell

Official Notice taken with regards to that the use of an icon indicating that a menu navigation has been activated, admitted by Appellant as being well known supported by the "How to Use Microsoft Windows NT 4 Workstation" by Jacquelyn Gavron and Joseph Moran, dated 1996. In particular page 111.

Official Notice taken with regards to that a media provider determining advertising content on the active channel, admitted by Appellant as being well known, is supported by U.S. Patent 6,698,020 B1 to Zigmond.

Official Notice taken with regards to that the use of a PVR is supported by U.S. Patent 6,757,906 to Look.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2623

2. Claims 1, 2, 12, 14-16, 23-24, 27-43, 46-47, 57, 59-61, 68-69, 71-88, 91-92, and 94-95 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,268,849 to Boyer in view of U.S. Patent 6,005,565 to Legall.

Regarding claim 1, Boyer discloses a method of providing media program information, comprising the steps of:

Accepting a command to select an active channel from a plurality of selectable channels (column 10, lines 53-60, listings are arranged in time order from the current time)

accepting a command to provide a menu guide selected from a plurality of menu guides (figure 2, web page 200, with guides for different zip codes, time zones and providers, column 7, line 54-column 8, line 31, a user selects a guide after which a guide shown in figure 8 is displayed which enables a user to view by time) together defining a media program information space segmented by a daypart (figure 9, time of day information 630),

wherein the menu guide is associated with a first daypart (figure 9, afternoon, the Knicks game is in progress as shown in program info box 636 and indicated 650) ; and

providing the menu guide, the menu guide comprising a menu guide content (TV listings)portion presenting at least some of the media program information (program info 636).

Boyer fails to disclose displaying all of the media programs scheduled to be available on the channel during the first day part.

Art Unit: 2623

Legall discloses in Figure 3b, a web browser based EPG (column 3, lines 11-28), in which a user may utilize a number of filter features (column 3, lines 28-56), including a start time 351 (daypart) and end time (figure 3c), thus enabling a user to further refine their search.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Boyer to utilize the start and end times of Legall, in order to only display programming within a certain time of day, for the advantage of refining a user search in order to make it easier to find programs of interest.

Regarding claims 2 and 47, Boyer discloses in figure 9, program info 636, which describes a media program, scheduled to be available on an active channel during the first daypart (column 9, line 57-column 10, line 10).

Legall is relied upon to teach displaying programs available within certain hours (figures 3b/c).

Regarding claims 12 and 57, Boyer discloses in figure 9, that a plurality of program information which is available on a channel for a daypart may be displayed (listings from 1:30pm-3pm), a user presses a button 630 to view listings by time of day (column 9, lines 32-45), and a user may display listings for only the active channel (figure 12) for the current daypart.

Art Unit: 2623

Regarding claims 14 and 59, Boyer discloses that a user may scroll via icons 622, 624 for time, and via scrollbar 620 for channels (column 9, lines 29-31).

Regarding claims 15 and 60, Boyer discloses that a user may select a program, and additional information is displayed regarding that program (column 9, line 55-column 10, line 24).

Regarding claims 16 and 61, Boyer discloses in figures 7 and 9, advertising portion that displays an advertisement for Combat (figure 7) and Gillette (figure 9).

Regarding claims 23-24 and 68-69, Boyer discloses that a user may navigate a program guide by selecting how they wish to view the guide in figure 8 (column 8, lines 50-56), a user may then scroll through the available programming (column 9, lines 29-31) a user may select a program and program information is displayed(column 9, lines 55-63).

Regarding claims 26 and 71, Boyer discloses that a user may select a program for recording (column 5, lines 50-57).

Regarding claims 27-28 and 72-73, Boyer discloses that the daypart may be the current time or a selected time (column 8, line 67-column 9, line 4, 32-37).

Art Unit: 2623

Regarding claims 29 and 74, Boyer discloses that a user may use a cursor 622/624 to navigate to earlier or later time periods, thus enabling a user to scroll through parts of the day, and use a cursor 626/628 to navigate through the program listings (column 9, lines 29-32).

Regarding claims 30, 43, 75 and 88, Boyer discloses:

Accepting a selection of a selection of a second daypart from the media program information space (column 9, lines 29-36), and

Providing a second menu guide (column 9, lines 33-45), the second menu guide comprising the menu guide content portion presenting at least some of the media program information describing at least one media program scheduled to be available on an active channel during the second daypart (a user clicks on the morning button and morning program listings for the channels are displayed, column 9, lines 33-36).

Regarding claims 31 and 76, Boyer discloses that a user may select a day to navigate to in section 632 (column 9, lines 37-46).

Regarding claims 32 and 77, Boyer discloses that a user may select a program, and additional information is displayed regarding that program (column 9, line 55-column 10, line 24).

Art Unit: 2623

Regarding claims 33-34 and 78-79, Boyer discloses in figure 9, a menu section on the left hand portion of the screen, with an icon section 634, which enables the user to navigate to different guides, the guide may be a browser window implemented by an Internet Explorer or Netscape browser (column 6, lines 1-10).

Boyer and Legall does not does not disclose the use of an icon which indicates when the menu has been activated.

The examiner takes official notice that the use of an icon indicating that a menu navigation has been activated is notoriously well known in the art. For example, when a user clicks on a link in an Internet Explorer window, the Internet Explorer icon in the top right corner displays an animation while the data is loading, thus indicating to a user that a data transfer is active.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Boyer and Legall to display a status icon indicating a transfer of data, so that a user would know when a data transfer is occurring.

Regarding claims 35 and 80, Boyer discloses that a user may designate a second channel as the active channel, and program information corresponding to the new channel is then displayed (column 10, lines 40-65, figures 11-12).

Regarding claims 36 and 81, Boyer discloses accepting a command to activate the channel portion of the menu guide (column 10, lines 40-45), and

Art Unit: 2623

Accepting a command to designate one of the selectable channels the active channel (column 10, lines 46-53).

Regarding claims 37-38 and 82-83, Boyer discloses that a user may view the channels by numerical order (figure 9), or by category (column 7, lines 63-65), the channels may be re-organized by pressing a button 634 (column 9, lines 47-54).

Regarding claims 39-40 and 84-85, Boyer shows in figure 13, a category selection menu which enables a user to select a movie or news category (column 10, line 65-column 11, line12), the listings are then listed for the corresponding category in channel number order and by the current time (day part).

Regarding claims 41-42 and 86-87, Boyer shows in figure 13, a category selection menu which enables a user to select a movie or news category (column 10, line 65-column 11, line12), the listings are then listed for the corresponding category in channel number order and by the current time (day part).

Boyer does not disclose the enabling a user to select from a plurality of subcategories.

Legall discloses subcategories section 346 in figure 3b, which enable a more refined search, thus enabling a user to easily find a program of interest.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Boyer to utilize a number of selectable subcategories as

Art Unit: 2623

taught by Legall to enable a more refined search, for the advantage enabling a user to easily find a program of interest.

Regarding claim 46, Boyer discloses an apparatus for providing media program information describing media programs, comprising:

a receiver, having a tuner for receiving the media program and the media program information (PCTV with tuner column 5, lines 32-38, 52-58),

a processor, communicatively coupled to the tuner, for accepting a command to select an active channel from a plurality of selectable channels. (column 10, line 48-64) and for accepting a command to provide a menu guide selectable from a plurality of menu guides together defining a media program information space (figure 2, web page 200, with guides for different zip codes, time zones and providers, column 7, line 54-column 8, line 31, a user selects a guide after which a guide shown in figure 8 is displayed which enables a user to view by time) segmented by a daypart (figure 9, time of day 630) and for providing a menu guide having a menu guide content portion presenting the media program information scheduled to be displayed on the active channel (figure 12, all programs on the active channel from the present time on are displayed, column 10, lines 54-60).

Boyer fails to disclose displaying solely all of the media programs scheduled to be available on the channel during the first day part.

Legall discloses in Figure 3b, a web browser based EPG (column 3, lines 11-28), in which a user may utilize a number of filter features (column 3, lines 28-

Art Unit: 2623

56), including a start time 351 (daypart) and end time (figure 3c), thus enabling a user to further refine their search.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Boyer to utilize the start and end times of Legall, in order to only display programming within a certain time of day, for the advantage of refining a user search in order to make it easier to find programs of interest.

Regarding claims 91-92, Boyer discloses a method of presenting advertising a menu guide, comprising the steps of:

Accepting advertising media content (figure 9, Gillette logo) and a media program from a media content provider and a media program from a media content provider (column 5, lines 45-58),

Providing the media program information to a subscriber on an active channel (figure 12, column 10, lines 53-58) and

Providing a menu guide selectable from a plurality of menu guides together defining a media program information space (figure 2, web page 200, with guides for different zip codes, time zones and providers, column 7, line 54-column 8, line 31, a user selects a guide after which a guide shown in figure 8 is displayed which enables a user to view by time) segmented by a daypart (figure 9, time of day 630) and for providing a menu guide having a menu guide content portion presenting the media program information scheduled to be displayed on the active channel (figure 12, all programs on the active channel from the present time on are displayed, column 10, lines 54-60).

Art Unit: 2623

Boyer fails to disclose displaying solely all of the media programs scheduled to be available on the channel during the first day part.

Legall discloses in Figure 3b, a web browser based EPG (column 3, lines 11-28), in which a user may utilize a number of filter features (column 3, lines 28-56), including a start time 351 (daypart) and end time (figure 3c), thus enabling a user to further refine their search.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Boyer to utilize the start and end times of Legall, in order to only display programming within a certain time of day, for the advantage of refining a user search in order to make it easier to find programs of interest.

Regarding claim 94, Boyer discloses a method of presenting media program information describing at least one media program (figure 9) comprising the steps of:

Accepting a command to access the media program information at a time of day (time of day buttons 630, column 9, lines 28-36),

Determining a first daypart selected from the group comprising a current daypart defined from the time of day (column 9, lines 2-7) and a selected daypart (column 9, lines 28-36) and,

providing a menu guide having a menu guide content portion presenting the media program information scheduled to be displayed on the active channel (figure 12, all programs on the active channel from the present time on are displayed, column 10, lines 54-60).

Art Unit: 2623

Boyer fails to disclose displaying solely all of the media programs scheduled to be available on the channel during the first day part.

Legall discloses in Figure 3b, a web browser based EPG (column 3, lines 11-28), in which a user may utilize a number of filter features (column 3, lines 28-56), including a start time 351 (daypart) and end time (figure 3c), thus enabling a user to further refine their search.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Boyer to utilize the start and end times of Legall, in order to only display programming within a certain time of day, for the advantage of refining a user search in order to make it easier to find programs of interest.

Regarding claim 95, Boyer discloses that the media program information is further based on time of day (column 10, lines 53-59).

3. Claims 3-5, 8-10, 17-22, 25, 48-50, 53-55, 62-67 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,268,849 to Boyer in view of U.S. Patent 6,005,565 to Legall in further view of U.S. Patent 6,177,931 to Alexander.

Art Unit: 2623

Regarding claims 3 and 48, Boyer discloses in figure 9, program info 636, which describes a media program, scheduled to be available on an active channel during the first daypart.

The combination of Boyer and Legall does not disclose a channel portion indicating an active channel, however Boyer discloses that the device may be a PCTV and that a user may use the guide to tune to a channel (column 5, lines 34-58).

Alexander discloses in figure 1 that a cursor 36 can be used to select and highlight an active channel, a border is then placed around the active channel (column 3, lines 21-36), thus making it easy to navigate through the guide by knowing where the cursor is.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to utilize the cursor of Alexander to recognize an active channel, for the advantage of making it easy to navigate through the guide by knowing where the cursor is.

Regarding claims 4 and 49, Boyer discloses that selectable channels are indicated (column 5, lines 34-58).

Regarding claims 5 and 50, Boyer discloses in figure 9, that the channels are organize in numerical order.

Regarding claims 8 and 53, Boyer discloses in figure 9, a program guide.

Art Unit: 2623

The combination of Boyer and Legall does not disclose a picture in guide portion.

Alexander discloses in figure 1, a picture in guide window 12, which displays the last channel viewed by the user, or the currently highlighted channel (column 3, line 56-column 4, line 27), thus enabling a user to follow a current program while making their next viewing choice.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to utilize the picture in guide feature of Alexander, thus enabling a user to follow a current program while making their next viewing choice.

Regarding claims 9 and 54, Boyer discloses in figure 9, a program guide.

Boyer and Legall does not disclose a picture in guide portion, which reflects content on the active channel.

Alexander discloses in figure 1, a picture in guide window 12, which displays the last channel viewed by the user, or the currently highlighted channel (column 3, line 56-column 4, line 27), thus aiding a user in selecting a program to view.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to utilize the picture in guide feature of Alexander, thus aiding a user in selecting a program.

Regarding claims 10 and 55, Boyer discloses in figure 9, a program guide.

Art Unit: 2623

The combination of Boyer and Legall does not disclose a picture in guide portion, which presents media information regarding the current program on the active channel.

Alexander discloses in figure 1, a picture in guide window 12, which displays the last channel viewed by the user, or the currently highlighted channel (column 3, line 56-column 4, line 27), thus aiding a user in selecting a program to view.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to utilize the picture in guide feature of Alexander, thus aiding a user in selecting a program.

Regarding claims 17 and 62, Boyer discloses ads in figures 7 and 9.

The combination of Boyer and Legall does not disclose if the advertising content is determined by a provider of the media program on the active channel.

Alexander discloses in figure 1, a PIP window 12 that plays video for the last tuned channel, or the currently highlighted channel (column 3, line 63-column 4, lines 27), panel advertisements may be displayed in windows 14 and 16 (column 21, lines 39-54), and a virtual parent ad 52, which is contextually linked to the channel displayed above it (column 22, lines 34-47, column 23, lines 12-19), thus providing many opportunities to view an advertisement.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Boyer to display advertisements as taught by Alexander, thus providing a viewer with many opportunities to view an advertisement.

Art Unit: 2623

The combination of Boyer, Legall and Alexander fails to disclose a media programming provider determining the advertising content provided on the active channel.

The examiner takes official notice that a media provider determining advertising content on the active channel is notoriously well known in the art. For example, during the Super Bowl national advertisements for Pepsi are displayed during a commercial break, thus guaranteeing that a large number of viewers would see an advertisement and enable the ability to charge an advertiser more money for airtime for a corresponding larger viewership.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer, Legall and Alexander, to enable a program provider to determine what advertisements to display, thus guaranteeing that a large number of viewers would see an advertisement and enable the ability to charge an advertiser more money for airtime for a corresponding larger viewership.

Regarding claims 18 and 63, Boyer discloses ads in figures 7 and 9.

The combination of Boyer and Legall does not disclose if the advertising content is contextually related to the media program on the active channel.

Alexander discloses in figure 1, a PIP window 12 that plays video for the last tuned channel, or the currently highlighted channel (column 3, line 63-column 4, lines 27), advertisements within the EPG may be contextually related to the last program watched or displayed in PIP window 12 (column 34, line 56-column

Art Unit: 2623

35, line 12, a user watching a basketball game, gets advertisements for athletic shoes presented by a basketball star), thus providing advertisements which would be of the most interest to the user.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to utilize the targeted advertising of Alexander, thus providing advertisements, which would be of the most interest to the user.

Regarding claims 19-20 and 64-65, Boyer discloses ads in figures 7 and 9.

The combination of Boyer and Legall does not disclose if the advertising content is determined by user preferences or habits

Alexander discloses a number of virtual ad spaces, the contents of which may be determined by user profiling which includes user view habits and preferences (column 29, line 31-column 30, line 37, column 32, lines 24-34), thus delivering more effective advertisements which would be tailored to a user's interests.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to utilize a profile which includes viewer habits and preferences provided targeted advertisements as taught by Alexander, thus delivering more effective advertisements which would be tailored to a user's interests.

Art Unit: 2623

Regarding claims 21 and 66, Boyer discloses ads in figures 7 and 9.

The combination of Boyer and Legall does not disclose if the advertising content is determined by daypart.

Alexander discloses in figure 1, a PIP window 12 that plays video for the last tuned channel, or the currently highlighted channel (column3, line 63-column 4, lines 27), panel advertisements may be displayed in windows 14 and 16 (column 21, lines 39-54), time may be taken into account in order to determine the type of user who is watching and advertisements are presented accordingly, (column 35, lines 13-26, morning content may be aimed at housewives, children in early evenings, men Sunday afternoons), thus providing advertisements which would be of the most interest to the user.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to utilize the time of day advertising of Alexander, thus providing advertisements which would be of the most interest to the user.

Regarding claims 22 and 67, Boyer discloses ads in figures 7 and 9.

The combination of Boyer and Legall does not disclose if the advertisements are user selectable and enable a user to initiate contact with a vendor.

Alexander discloses that the advertisements are interactive, a user may select an advertisement and visit a related webpage provided by a vendor

Art Unit: 2623

(column 18, lines 1-12, column 27, lines 49-48), thus enabling a user to learn more about a product or service.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to enable a user to select an ad to connect to a vendor website as taught by Alexander, thus enabling a user to learn more about the advertised product or service.

Regarding claims 25 and 70, Boyer discloses that a user may click on a channel to learn more about the programming.

The combination of Boyer and Legall does not disclose the use of a home channel or program.

Alexander discloses in figure 1, a home channel (Prime time live program which is currently selected by cursor 36, the content for this program may be displayed in PIP window 12, (3, lines 63-column 4, line 8), thus enabling a user to easily navigate back to the program they are watching.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to utilize the home channel of Alexander, thus making it easy for a user to navigate back to the last program watched.

4. Claims 44-45 and 89-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,268,849 to Boyer in view of U.S. Patent 6,005,565 to Legall in further view of U.S. Patent 6,219,839 to Sampsell.

Regarding claims 44 and 89, Boyer discloses that a user may select more than one channel, after which program information is displayed in box 636 (column 9, lines 55-61).

The combination of Boyer and Legall fails to disclose enabling a user to select a second channel, which provides access to an interactive service.

Sampsell discloses in figure 4, that a user may connect to an interactive ESPN service from within an EPG, the service is displayed as a channel 78 within the program guide and Internet service in figure 5, info service 82 (column 5, lines 20-62, column 6, lines 33-57), thus enabling a user to learn more about a program, and easily access supplemental content.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to list an interactive service as a channel as taught by Sampsell, thus enabling a user to learn more about a program, and easily access supplemental content.

Regarding claims 45 and 90, Boyer discloses that a user may select more than one channel, after which program information is displayed in box 636 (column 9, lines 55-61).

The combination of Boyer and Legall fails to disclose a channel listing which is a PVR channel, which provides access to programs, recorded on the PVR and the guide describes at least one media program on the PVR channel.

Art Unit: 2623

Sampsell discloses in figure 9, a DVD channel 102 which displays the contents of the program recorded on the DVD, and enables a user to access the programming (pop up window 104, column 7, lines 9-21) , a user may access recorded programming on a recordable DVD or VCR (column 7, lines 22-38), thus enabling a user to easily navigate between recorded programming and live programming to select a program of interest.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to utilize the VCR and DVD listings and access features of Sampsell, thus enabling a user to easily navigate between recorded programming and live programming to select a program of interest.

The combination of Boyer, Legall and Sampsell fails to disclose utilizing a PVR.

The examiner takes official notice that the use of a PVR is notoriously well known in the art. PVRs provide a high quality recording of a program, and can store many more hours of programming than videotape.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer, Legall and Sampsell to utilize a PVR, thus enabling for high quality recording of content, and allow for the storage or more hours of recorded programming.

(10) Response to Argument

Arguments with regards to claims 1,2, 12, 14-16, 23-24, 27-43, 46, 47, 57, 59-61, 68, 69, and 71-88:

Appellant argues that Legall does not teach performing a search that would result in Appellant's invention, in that Legall does not teach presenting media program information regarding media programs consisting of all the media programs scheduled to be available during the first daypart on a channel consisting of the active channel. Appellant argues that the Final Office action does not Explain how the search makes it easier to find a program of interest than any other kind of search that Legal could support. Appellant argues that the combination of Boyer and Legall is hindsight, and that Examiner's motivation of "for the advantage of refining user search in order to make it easier to find programs of interest" could be met by any number of different use searches that do not read on Appellant's claims. (pages 12-13).

As a preliminary matter, the Examiner notes that Boyer is relied upon to teach each and every feature of the claim except for the "...media programs consisting of all of the media programs scheduled to be available during the first daypart on a channel..." (claim 1, lines 9-10). Legall is relied upon to teach these features. Boyer does disclose dayparts, but lacks the customizable daypart features of Legall.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only

Art Unit: 2623

knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Boyer and Legall are program guide systems, in the same area of endeavour, which aide a user in selecting programs to watch. Boyer enables a user to search by channel, or time. Boyer however fails to show all of the media programs scheduled to be available during the first daypart. Rather Boyer (figure 12, column 10, lines 53-64) shows all of the

Art Unit: 2623

programs for the current day part (hours 11am-11:59pm) on a single channel, but additionally shows programs for the next day as well . Legall discloses a similar approach but provides many additional search options (see figure 3b) for example different sources, categories, topics, start times, lengths etc which enable user to further refine a search in order to make it easier to find a program of interest. Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Boyer to utilize the start and end times of Legall, in order to only display programming within a certain time of day, for the advantage of refining a user search in order to make it easier to find programs of interest.

The Examiner notes that both Boyer and Legall are database systems which apply filters. Adding Legall's additional filters allows a user to select a level of granularity in their search results. Further, by relying upon all of Legall's filters (column 3, lines 28-56, figure 3b, which includes topics, categories, sub categories, start times, different search engines, ratings) the Examiner is not using hindsight as the Examiner is not relying exclusively on the time dependant filtering options as taught by Legall in making the combination and the Boyer reference itself discloses using multiple filters (time of day, category, channel)..

Further, Boyer is relied upon to teach restricting a search to a single channel (see column 10, lines 53-60). Legall is relied upon to teach a number of additional search options, sources, categories, topics, start times, lengths etc. Modifying Boyer to utilize the additional search criteria of Legall, including the time criteria, would not only result in restricting a search to times for content to be displayed on a single channel (including all of the programs for viewing on a

Art Unit: 2623

single day), but would enable the user to refine the such further to those categories, topics, rating etc, if the user chose to do so. Given that the number of possible viewing choices on multiple channels at multiple times of day is enormous, these filtering options make it very easy for a user to select a program of interest, by only displaying programs which a user is interested in. For example, a user selecting the business category 344 would enable a user to just view business related programs, without having to browse through search results on their own to find business related programs. This saves the user a considerable amount of time and frustration.

Further, Legall's restriction of start times (element 351 on figure 3b) and EPG length 352, constitutes a day part, as it restricts the search to a part of the day, likewise, Boyer teaches dayparts 630 (figure 9, early morning, mid day, afternoon, prime time, late nite).

Therefore, Boyer, in combination with Legall teaches each and every feature of the independent claims.

Appellant argues that Legall does not disclose a system that is capable of performing a search that would present a result analogous to the applicant's invention. Neither Boyer nor Legall discloses presenting all of the media programs scheduled to be available during the first daypart on a single channel, and Legall's power search function does not teach the ability to limit the search result by channel. (page 13).

Art Unit: 2623

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The Examiner notes that it is the combination of filters of Boyer which show all of the programs on a single channel (Boyer discloses dayparts as well), with the additional filters of Legall which restrict the programming to that only shown on a particular daypart which teach applicant's claims. Boyer (figure 12, column 10, lines 53-64) shows all of the programs for the current day part (hours 11am-11:59pm) on a single channel, but additionally shows programs for the next day as well. Thus the combination of the filters of Boyer and Legall would result in the display of all of the programming on a single channel (Boyer) with all of the programming for that particular daypart (Legall).

Therefore, Boyer, in combination with Legall teaches each and every feature of the independent claims.

Appellant argues that the dayparts shown in Boyer are not day parts at all in that only 2 hours at a time are displayed for each daypart and 6 dayparts times 2 hours is 12 hours and not a 24 hour period. Appellant notes the Examiner's argument that the claims do not require showing 24 hours of programming, and argues that the claims are to be given their broadest possible reasonable

Art Unit: 2623

interpretation. Appellants specification defines a daypart as "A daypart is a period of time, typically, but not necessarily periodic over 24 hours during which viewers characteristically watch programs which are sufficiently related so that inference may be drawn to which other programs the viewer would be interested ."

Appellant argues that Boyer teaches showing parts of a day, but not a daypart.

(Pages 13-17).

The Examiner does not see Appellant's definition of "Daypart" to be incompatible with the Examiners position of the term "Daypart".

The claims do not require showing 24 hours of programming. In fact the claims are silent with regards to showing "multiple day parts". Showing 23 hours and 59 minutes of available programs would still be considered a day part. The claims merely require a daypart to be displayed. 2 hours of programming is a part of day. Morning/mid-day etc are parts of day. The broadest possible reasonable interpretation of the claims includes both 2 hours of the day, the selection of a morning/mid-day etc, and a user selected start time and duration as a daypart. All of these programs are related in that there is an inference based upon time and the displayed programs may be programs the user is interested based upon time, thus meeting applicant's definition of a daypart. Further the examiner is confused by applicants contention that it is clear that all of the media programs in a particular daypart are not shown in the grid, if one is to modify Boyer to utilize the additional filters taught by Legall. Again Appellant is arguing the references separately, rather than the *combination* of references.

Art Unit: 2623

Further Appellant's own definition does not require the sum of the hours of the corresponding dayparts to be 24 hours of the hours. Appellant's own definition states that the daypart's period of time is "not necessarily periodic over 24 hours".

Legall teaches displaying a daypart that a user may determine by selecting an EPG start time 351 and a EPG length time 352. This results in all of the programs for that corresponding daypart to be displayed.

Appellant argues that while Legall discloses filters, it does not show using those filters as described in claim 1. It is inappropriate to reject a claim based upon what a reference might be used to do, absent some teaching to actually do it.. If the Examiner's rejection were correct, a program guide that could possibly be arrived at by any use of Legall's filters in any combination would be unpatentable, no matter how novel and unobvious the combination. Plainly that is not the law (Page 17).

The Examiner notes, that if the teachings in the reference include the claim limitations, and there is proper motivation to combine, then it is appropriate to make such a combination. In this specific case however, Legal does explicitly teach the use of an EPG start time 351 and EPG length 352 to teach a daypart (figure 3b, column 3, lines 27-55). It is the combination of Boyer and Legall which teach each and every element of Appellant's claims.

Art Unit: 2623

Arguments with respect to claims 2, 12, 14-16, 23, 24, 27-43, 47, 57, 59-61, 68, 69 and 71-78:

Appellant argues that while it is acknowledged that while it is well known to change an icon in a web browser when a hyper link is selected, navigating a web browser is quite a different matter than navigating a menu displayed on television. Even if Boyer and Legall together disclose an icon (e.g. IE icon in the top right corner of Internet Explorer) that is not a navigation icon that indicates when the menu content portion of the menu guide is activated for navigation. The Examiner's teaching that whenever a link is navigated to, the IE menu icon would be momentarily displayed, does not indicate when a menu content portion of the menu guide is activated for navigation. If the menu icon was activated with the selection of any hotlink, it could not be said to indicate when the menu content portion of the menu guide is activated for navigation as required (pages 18-19).

Regarding Appellant's argument, the Examiner notes that claim language requiring display of a menu guide on a television is not present. Claim 46 requires a receiver with a tuner, but it is silent with regards to the display device. Further, Boyer discloses a PCTV with tuner see column 5, lines 32-38, 52-58. Applicant admits that it is well known to change an icon in a web browser when a hyperlink is selected. Boyer discloses that the webpages use hypertext links, (column 7, lines 42-53). Thus whenever a link is navigated too the IE menu icon would be momentarily displayed upon activation of the link.

Boyer discloses that the webpages (the displayed guide) use hypertext links, (column 7, lines 42-53). Thus whenever a link is navigated too the IE menu icon would be momentarily displayed upon activation of the link. The claim is silent as to a navigation icon being only activated when the menu portion is selected. Further, the menu in Boyer consists of every hyperlink, a user activating a hyperlink would simply result in navigating to a new screen or new portion of the menu, thus meeting the claim limitation of "a menu content portion navigation icon indicating when the menu content portion of the menu guide is activated for navigation". Further the claims do not require a separate menu portion.

Arguments with regards to claims 91, 92, 94 and 95:

Appellant argues that claim 94 recites features analogous to those of claims 1, 46, 91 and 92, but is also patentable for additional reasons as well. Boyer and Legall do not teach a searching capability that is related to the current daypart. The cited passages merely say that the program guide can start at the current time, but it displays program information for the media programs beginning at the current time and extending for some time period forward and does not disclose determining the daypart define from the time of day, nor does it provide media program information describing the media programs comprising of all the media programs scheduled to be available during the first daypart. Rather it shows information for all channels. (pages 20-21).

Art Unit: 2623

Regarding Applicants argument, Boyer teaches determining a first daypart selected from the group comprising a current daypart defined from the time of day (column 9, lines 2-7) and a selected daypart (column 9, lines 28-36). The current daypart is displayed to a user based on the current time. Alternatively a user may choose a daypart to navigate to. For Example if the current time of day is 11am, and the user chooses to display the guide, all of the programs which are scheduled to be broadcast at 11am are displayed. Appellant is incorrect that information for all channels is displayed. The Examiner relies upon the teachings in figure 12 and further at column 10 lines 53-60, in which Boyer clearly shows all of the programs from the current time (current daypart). Boyer explicitly states, "In the channel program list page 800, program listings page 802 for the selected channel may be arranged in time order, beginning with the current time."

The Examiner notes the group comprising language. The user in Boyer has the option of selecting a daypart to view or merely viewing the current daypart as determined by the present time. As the user chooses which they wish to view, a determination step is preformed.

Thus Boyer in combination with Legall teaches each and every element of the corresponding claims.

Arguments with regards to claims 3-5, 8-10 17-22, 25, 48-50, 53-55 62-67 and 70:

Appellant argues that neither, Boyer, Legall nor Alexander discloses a channel portion distinct from the menu guide portion of claim 1 and 2 all

Art Unit: 2623

Alexander discloses is that portions of the menu guide portion can be highlighted with a cursor. That does not indicate what the active channel is, and does not disclose a separate portion indicating the active channel. Highlighting a window does not indicate what the active channel is, nor does the act of highlighting make it a separate portion. (Page 22) Emphasis on the term separate was placed by the Examiner.

Claim 3 recites the following, "The method of claim 1, wherein the menu guide further comprises a channel portion indicating the active channel." The term separate does not appear anywhere in the text of the claim. The claim does not say anything at all about the active channel portion being separate from the menu guide.

Regarding applicant's argument, Boyer discloses in figure 12 a channel portion indicating a selected channel (2 KCBS). Claim 1 requires selection of an active channel. Claim 3 requires the menu guide to have a channel portion indicating the active channel. The combination of Boyer and Legall does not disclose a channel portion indicating an active channel.

Alexander discloses in figure 1 that a cursor 36 can be used to select and highlight an active channel, a border is then placed around the active channel (column 3, lines 21-36), thus making it easy to navigate through the guide by knowing where the cursor is. Further Alexander discloses in figure 1, a PIP window 12 that plays video for the last tuned channel, or the currently highlighted channel (column 3, line 63-column 4, lines 27). The Examiner equates this last

Art Unit: 2623

tuned, or currently highlighted channel to be the "active channel" as it is not only selected by the user, but it also has its corresponding content displayed to the user in an active window. The Examiner is confused by Appellant's contention that highlighting a window does not make the active channel separate. While Alexander does teach highlighting a window, Alexander also teaches highlighting the channel itself. A highlighting function clearly distinguishes an active channel from a non-active channel and is therefore a separate portion. The "active channel" has a special feature, which is not present on any other channel (the highlight), which not only distinguishes it apart from any other channel, but also denotes it separately from any other channel.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to utilize the cursor of Alexander to recognize an active channel, for the advantage of making it easy to navigate through the guide by knowing where the cursor is.

Thus Alexander, in combination with the Official notice, and Boyer and Legall teach each and every feature of the claims.

Appellant argues that Claim 17 recites advertising content that is determined by a provider of the media program provided on the active channel. The Examiner cited Alexander as teaching displaying a panel advertisement, which is contextually related to the channel displayed above it. The Examiner took official notice that a media provider determining advertising content was notoriously well known in the art. Appellant agreed that sponsored advertising is

Art Unit: 2623

old in the art but that has little to do with advertising presented in the context of a menu guide. It is one thing to have the media provider determine the advertising content provided in their own signal, it is quite another to have the media program provider do so in an interface that they do not generate or have control over (e.g. the menu guide) indeed providing advertising content in an advertising content portion would be redundant as that information is already provided to the viewer via the IPG. The Office action appears to confuse the subject matter of claim 18 with that of claim 17. Claim 18 recites that the advertising content is contextually related to the media program on the active channel. Claim 17 recites that the content is determined by the provider of the media program on the active channel, not just contextually related to it. In any case, Alexander teaches channel ads that are place within the menu content portion, not a (separate) advertising content portion. (Pages 22-23)

As a preliminary matter, Appellant again argues that a "separate" portion of the guide is required by the claims. The Examiner again points out that the term "separate" does **not** appear in the text of the claims. Therefore display of ads within a guide is appropriate.

Boyer shows in the top right corner of the EPG a number of different ads (figure 7, COMBAT, figure 9, Gillette, Figure 10 Dominos Pizza Logo, Figure 14, Matchlight) utilizing well-known logos of brand name companies. Boyer however fails to discuss how the display of those advertisements is determined.

Art Unit: 2623

Alexander discloses in figure 1, a PIP window 12 that plays video for the last tuned channel, or the currently highlighted channel (column 3, line 63-column 4, lines 27), advertisements within the EPG may be contextually related to the last program watched or displayed in PIP window 12 (column 34, line 56-column 35, line 12, a user watching a basketball game, gets advertisements for athletic shoes presented by a basketball star), thus providing advertisements which would be of the most interest to the user.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer and Legall to utilize the targeted advertising of Alexander, thus providing advertisements, which would be of the most interest to the user.

The combination of Boyer, Legall and Alexander would result in a system in which different advertisements may be displayed within the IPG based upon the content of the programming on the active channel. In addition, the menu guide would include a video display area, which displays the current video on that corresponding channel (PIP 12 of Alexander). Alexander does not discuss anything with regards to commercials being displayed on the currently tuned active channel. All that is missing to teach the limitations of claim 17 is a teaching that advertisements may be determined by a program provider. The Examiner took official notice official notice that a media provider determining advertising content on the active channel is notoriously well known in the art. For example, during the Super Bowl national advertisements for Pepsi are displayed during a commercial break, thus guaranteeing that a large number of viewers would see

Art Unit: 2623

an advertisement and enable the ability to charge an advertiser more money for airtime for a corresponding larger viewership.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify the combination of Boyer, Legall and Alexander, to enable a program provider to determine what advertisements to display, thus guaranteeing that a large number of viewers would see an advertisement and enable the ability to charge an advertiser more money for airtime for a corresponding larger viewership.

The resultant combination would meet claim 17 in that advertisements shown in the PIP window 12 of Alexander would be determined by the program provider. The claim does not prohibit the advertisements being shown on the currently tuned "active" channel, and fact such a teaching would meet the claim limitations, in that the program provider themselves determine what commercials are aired on their own channel, and that channel is displayed **within** the program guide.

Therefore, the combination of Boyer, Legall, Alexander and the Official Notice meet each and every limitation of the claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 2623

Respectfully submitted,

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